

Panaji, 21st August, 2003 (Sravana 30, 1925)

SERIES II No. 21

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

### No. 2

#### GOVERNMENT OF GOA

Department of Labour

#### Order

No. CL/Pub-Awards/2000/4243

The following Award dated 11-7-2000 in Reference No. IT/27/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*R. S. Mardolker*, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 24th August, 2000.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/27/94

Workmen,  
Rep. by The General Secretary,  
Gomantak Mazdoor Sangh,  
Kamakshi Krupa,  
Khadapa Band  
Ponda-Goa

... Workman/Party I

v/s

M/s. Vaz Engineering Co.,  
D-2-7 Mapusa Industrial Estate  
Mapusa-Goa.

... Employer/Party II

Workman/Party I-Represented by Adv. Shri P. B. Devari.

Employer/Party II-Represented by Adv. Shri B. G. Kamat.

Panaji, dated: 11-7-2000.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 17-8-1993 bearing No. 28/34/93-Lab referred the following dispute for adjudication by this Tribunal.

Whether the action of the management of M/s Vaz Engineering Co. Mapusa Industrial Estate, in terminating the services of the following seven workmen with effect from 1-12-92 is legal and justified?

- 1) Shri Francis Rocha
- 2) Shri Alexinho Fernandes
- 3) Shri John D'Souza
- 4) Satish Bhonsle
- 5) Shri Nilesh Chari
- 6) Shri Lazarus D'Souza
- 7) Shri Mahadeo Parab

If not, to what relief the workmen are entitled?"

2. On the receipt of the reference a case was registered under No. IT/27/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (for short, "Union") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the Union are that, Employer/Party II (for short, "Employer") industrial establishment and its workers are members of the said Union. That the employer employed Shri Francis Rocha, Shri Alexinho Fernandes, Shri John D'Souza, Shri Satish Bhonsle, Shri Nilesh Chari, Shri Lazarus D'Souza, Shri Mahadev Parab who are parties to the present reference. That the said workers worked for more than one year continuously with the employer. That the said workers joined the union in the month of August, 1992 and the union raised charter of demands on behalf of the said workers. That on receipt of the charter of demands the employer started harassing the workers and as a part of harassment the employer laid off the committee members of the union in the month of November, 1992. That since the demands were not

met, the union raised dispute before the Conciliation Officer, Panaji, and the conciliation proceedings were pending before the Conciliation Officer on the said charter of demands. That the employer terminated the services of the above workers without obtaining permission from the Conciliation Officer before whom the dispute on the charter of demands was pending. That the employer terminated the services of the workers only to victimise them because they have joined the union. That at the time of termination of service the employer did not pay legal dues to the workers. That since the time of termination of service the said workers are unemployed and are undergoing hardship. The union contended that termination of service of the workers by the employer is in contravention of the provisions of Industrial Disputes Act, 1947 and the same is illegal and unjustified. The Union therefore claimed that the above said workers are entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 5. The employer stated that it was a proprietary establishment of Mr. Damian Vaz till its closure and the employer used to carry out the business as designer and manufacturer of bakery machinery and used to undertake the work on job work basis pursuant to the orders placed by the customers. The employer denied that the workers were continuously with the employer without any break. The employer denied that the wages paid to the workers were very low or that there was any justification for submitting charter of demands. The employer denied that the workers were subjected to harassment or that the committee members of the union were laid off as contended by the union. The employer stated that because the employer opposed the demands raised by the union, the workers at the instigation of the union started indulging in all sorts of acts of indiscipline, disorderly behaviour and rowdism. The Employer stated that the workers at the instigation of the union resorted to "go-slow" policy which resulted into reducing and showing down the production from August to October, 1992 as a result of which the number of work job orders breached resulting in substantial loss to the employer and to his reputation. The employer stated that the union instigated the workers to resort to strike w.e.f. 16th November, 1992. The employer stated that due to the acts of obstruction of normal work and threats given by the workers it was not conducive for the continuance of the working of establishment in a peaceful, normal and profitable manner and therefore the employer was left with no alternative but come to the conclusion that it was not possible to allow to continue the said state of affairs any longer without endangering his life and safety including his properties and hence the employer was constrained to close his establishment w.e.f. 1-12-92. The employer stated that the services of all the said 7 workers were terminated w.e.f. 1-12-92 on account of the closure of the establishment on payment of notice pay, compensation and all other legal dues to which the workers were entitled to. The employer denied that any permission was required to be obtained

from the Conciliation Officer before terminating the services of the workers or that the termination was by way of victimization for joining the union as contended by the union or that the termination is in contravention of the provisions of the Industrial Disputes Act, 1947. The employer denied that the said workers are unemployed and stated that each workman is in gainful employment after termination of service. The employer denied that the termination of the service of the workers is illegal and unjustified and stated that the workers are not entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7. After the issues were framed, the case was fixed for the evidence of the Union/Workmen. The Union examined three workmen who were the parties to the reference. The case was fixed for further evidence of the union on 27-9-96. On this date Adv. Shri B. G. Kamat representing the employer filed an application at Exb. 13 stating that Shri Damian Vaz, the proprietor of the employer establishment has expired in Bombay on 5-9-96 and that at the time of his death he was unmarried. Thereafter the union filed an application dated 4-11-96 at Exb. 14 stating that the employer is a proprietary concern and Shri Damian Vaz, the proprietor, has expired leaving behind his brother Shri Fedric Vaz and his successor in interest and prayed that he be brought on record as the legal representative of Shri Damian Vaz. Notice of this application was given to Shri Fedric Vaz who filed reply dated 9th July, 1998 objecting to the application. He stated that he is neither the heir nor the legal representative of Shri Damian Vaz and that said Damian Vaz has died without leaving behind any estate. Thereafter this Tribunal passed the order dated 24-8-99 dismissing the application dated 4-11-96 filed by the union holding that the union had not disputed that the business of the employer was closed from 1-12-92 and that there was no evidence to show that Shri Fedric Vaz has succeeded to the estate of his brother Damian Vaz or that said Damian Vaz has left any estate behind him, and therefore said Shri Fedric Vaz cannot be brought on record as the legal representative of his brother Shri Damian Vaz.

5. The employer in its written statement had taken the defence that the business was closed from 1-12-92 and the termination of the services of the workmen was on account of the closing of the business. The union had filed rejoinder to the written statement filed by the employer. In the rejoinder the union did not dispute that the employer's business was closed from 1-12-92. The union's case was that closure of the business by the employer was illegal. The application filed by the Union for bringing on record Shri Fedric Vaz, the brother of the deceased proprietor Shri Damian Vaz, as the legal representative was also dismissed by this Tribunal vide order dated 24-8-99. This being the case there is no employer before this Tribunal, in the present case. Since the employer itself is not in existence, there is no party before this Tribunal, against whom the relief can be granted. Consequently, in my view the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the employer namely M/s Vaz Engineering Co. is not in existence in view of the death of its proprietor Shri Damian Vaz and there being his no legal heir/representative.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/4245

The following Award dated 10-7-2000 in Reference No. IT/47/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 24th August, 2000.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/47/97

Shri Suraj Naik & 13 others  
Vodle Moll, Kakoda,  
Curchorem-Goa. ... Workmen/Party I

v/s

M/s Novel Industries,  
12 Cacora Industrial Estate,  
Curchorem-Goa. ... Employer/Party II

Party I Workman — Represented by Adv. Shri P. Goankar.

Party II Workman — Represented by Adv. Shri B. G. Kamat.

Panaji, dated.: 10-7-2000.

AWARD

In exercise of the powers conferred by sub-section(2) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13th August, 1997, bearing No. IRM/CON/SG/(13)/97/4268 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Novel Industries, Kakoda, Curchorem-Goa, in terminating the services of the following 14 workmen with effect from 1-5-1997, is legal and justified?"

- |                            |                              |
|----------------------------|------------------------------|
| (1) Shri Debu Batacharya   | (8) Shri Anand Naik          |
| (2) Shri Charles Saxes     | (9) Shri Lawrence Rodrigues  |
| (3) Shri Devidas Karmalkar | (10) Shri Dominic Fernandes  |
| (4) Shri Pradip Naik       | (11) Shri John Fernandes     |
| (5) Shri Suraj Naik        | (12) Shri Surya Naik         |
| (6) Shri Alex Rodrigues    | (13) Shri Santosh Naik       |
| (7) Shri Remedious Travaso | (14) Shri Prashant Dabolkar. |

If not, what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/47/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen-Party I (for short, "Workmen") filed their statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workmen are that the Employer-Party II (for short, "employer") is engaged in the business of manufacturing activities since the year 1990 and is having its establishment at Kakoda, Curchorem-Goa. That the workmen were employed with the employer and they have put in more than one year continuous service. That the employer refused employment to the workmen from 1-5-97 and before termination of their service the employer did not pay any legal dues to them nor offered the same to them. That the employer terminated their services without conducting any enquiry. The workmen contended that the termination of their service by the employer is in violation of the principles of natural justice as also in violation of the provisions of Sec. 25F and 25FFF of the Industrial Disputes Act, 1947. The workmen contended that since termination of their service by the employer w.e.f. 1-5-97 is illegal and unjustified they are entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that its manufacturing operations were financed by bankers and EDC and since 1993 the employer started facing financial difficulties and became a sick unit. The employer stated that ultimately the EDC took over the possession of the assets including of the work place from 24-4-97 under Sec. 29 of the State Financial Corporation Act, 1951, as a result of which employer was compelled to close its business and to terminate the services of the workmen from 1-5-97. The employer stated that termination of the services of the workmen was on account of unavoidable circumstances beyond the control of the employer.

The employer denied that employment was refused to the workmen or that before termination of their service their legal dues were required to be paid or that any enquiry was required to be conducted before termination of their service or that there is violation of Sec. 25F and 25FFF of Industrial Disputes Act, 1947. The employer denied that the workmen are entitled to any relief as claimed by them.

4. On the pleadings of the parties, issues were framed at Exb. 6. Subsequently the workmen filed the application dated 24-7-98 at Exb. 8 for impleading EDC as a party to the proceedings. After hearing the parties including EDC the application filed by the workmen was dismissed by order dated 27-11-98. After the issues were framed and the application filed by the workmen for impleading EDC as a party to the proceedings was dismissed, the case was fixed for the evidence of the workmen. On 28-2-2000 on which date the case was fixed for hearing Shri P. Gaonkar representing the workmen, filed an application dated 28-2-2000 at Exb. 14 stating that the workmen had already filed an application before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 for recovery of the amount due to them and therefore the workmen did not wish to contest further in the matter and pray that no dispute award be passed. Adv. B. G. Kamat submitted that the employer does not have any objection for passing the no dispute award.

5. The reference of the dispute was made by the Government at the instance of the workmen. By application dated 28-2-2000 Exb. 14, the workmen themselves have submitted that they do not want to contest further the present reference and have prayed for passing the no dispute award. Since the workmen do not wish to proceed further with the reference, the dispute does not exist and consequently the reference does not survive. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference does not survive since the dispute does not exist. No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/4246

The following Award dated 12-7-2000 in Reference No. IT/67/97 given by the Industrial Tribunal, Panaji Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 24th August, 2000.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/67/97

Workmen rep. by  
Gomantak Mazdoor Sangh,  
Khadapaband,  
Ponda-Goa.

.... Workmen/Party I

v/s.

M/s Shivmudra Packaging  
Pvt.Ltd., 72 Bethora Industrial  
Estate, Bethora,  
Ponda-Goa.

... Employer/Party II

Party I/Workmen-Represented by Shri P. Goankar.

Party II/Employer-Represented by Adv. Shri P. J.Kamat.

Panaji, dated 12-7-2000.

#### AWARD

In exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa by order dated 4th November, 1997, bearing No. IRM/CON//PONDA/(121) 97/5601 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Shivmudra Packaging Pvt. Limited, Bethora-Ponda Goa, in declaring lockout at the factory, with effect from 19-12-1996 and thereafter closing down the factory on 28-1-1997, is legal and justified? If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/67/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen-Party I (for short, "Union") filed statement of claim at Exb.4. The facts of the case in brief as pleaded by the union are that the Employer-Party II (for short, "Employer") employed workmen to carryout skilled/semi skilled and unskilled work. That the employer is a partnership firm engaged in the various types of printing work since the year 1988. That in the month of November 1996 the workers requested the employer to pay wages to them as per the minimum wages fixed by the Government of Goa. That the employer did not pay the same wages to the workers and instead locked out the factory from 19-12-96 and ultimately closed the factory on 28-1-97. That before the closure of the factory the employer did not pay the legal dues of the workers such as notice pay,

retrenchment compensation, gratuity, leave wages etc., nor gave any notice of closure nor conducted any enquiry before terminating the services of the workers. The Union therefore contended that termination of the services of the 12 workmen is illegal, unjustified and bad in law. The union therefore prayed for a declaration that the lock-out and closure is illegal and that the employer may be directed to pay the legal dues of the workers.

3. The employer filed Written Statement at Exb. 5. The employer stated that the Economic Development Corporation of Goa has become the deemed owner of the Unit u/s 29(5) of the State Finance Corporation Act, 1951 after attachment of the Unit by the said Corporation and hence it is a necessary party to the reference. The employer also stated that the reference is not maintainable because there is no industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947; the General Secretary of the Union is not empowered to raise dispute on behalf of the workmen; the factory of the employer is closed factory and therefore there cannot be any dispute about the same nor the dispute of closure was raised by the workers at any time. The employer stated that it was carrying on the business of manufacturing of multicolour cartoons, boxes and labels at their factory situated at Bethora Industrial Estate, Bethora, Ponda, Goa, and on account of financial difficulties, the employer could not pay the payment of installments to the EDC from whom the employer had taken loan for the purpose of business. The employer stated that due to non payment of dues EDC attached the factory shade on 28-1-97 and forced the employer to suspend its manufacturing activities from 28-1-97. The employer stated that the closure of the factory was on account of the reasons beyond the control of the management and the said closure is permanent and bonafide. The employer stated that EDC sold the said unit/factory by inviting tenders from the public and in view of the sale of the unit the question of legality or justifiability of the closure does not arise for consideration. The employer stated that the union has not specified as to which workmen were skilled, semi skilled and unskilled. The employer denied that at the time of alleged lockout and closure there were 12 workmen on the roll of the employer or that they were the members of the union. The employer denied that before the closure of the factory the workers were not paid their legal dues including the notice pay. The employer stated that since the closure was on account of the attachment of the unit by EDC and financial difficulties, there was no question of payment of retrenchment compensation and other dues alleged to be paid. The employer stated that the workmen were paid the notice pay in view of the notice along with the letter dated 21-2-97. The employer denied that before terminating the services of the workmen the party I did not comply with the provisions of the Industrial Disputes Act, 1947. The employer denied that all the workmen are unemployed after termination of their service on account of closure or

that they are undergoing hardship due to unemployment. The employer stated that termination of service of the workmen is legal and justified and since the closure is factual this Tribunal cannot grant any relief to the workers.

4. Thereafter the union filed amendment application dated 1-7-98 at Exb.6 seeking to implead EDC as a party to the proceedings and also seeking to claim the legal dues payable to the workmen as per the details given in the annexure "A, B and C" annexed to the said application. After hearing the parties by order dated 27-11-98 this Tribunal dismissed the amendment application of the union to the extent of impleading EDC as a party to the proceedings. Thereafter the union filed an application dated 3-3-99 stating that the union wishes to withdraw the other part of the amendment claiming legal dues and sought permission to file a fresh amendment application and accordingly the union filed an amendment application dated 3-3-99 at Exb. 12 seeking to amend the statement of claim. After hearing the parties the said amendment application was dismissed by this Tribunal by order dated 1-7-99. Thereafter issues were framed at Exb. 16 and the case was fixed for the evidence of the union. On 28-2-2000, the date of which the case was fixed for hearing the union filed an application dated 28-2-2000 Exb.18 stating that the union does not wish to contest the matter any further because the union has filed an application u/s 33C(2) of the I.D.Act, 1947 for recovery of the amount due to the workers. The Union prayed that no dispute award be passed. The employer did not object to the said application.

5. The reference of the dispute was made by the Government at the instance of the Union for adjudication by this Tribunal. By application dated 28.2.2000 the union itself has submitted that it does not desire to contest further the present matter and has prayed for passing the no dispute award. Since the union itself does not wish to proceed further with the reference, the dispute does not exist and consequently the reference does not survive. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference does not survive since the dispute does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Order**

No. CL/Pub-Awards/2000/5147

The following Award dated 13-9-2000 in Reference No. IT/66/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 13th October, 2000.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/66/98

Shri Purushottam Dessai,  
Re. by The Goa MRF  
Employees Union,  
"Saidham" Davalimol,  
P.O. Quella,  
Ponda-Goa.

... Workman/Party I

v/s

The Sr. General Manager,  
M/s M.R.F. Ltd.,  
Usgao, Ponda-Goa.

... Employer/Party II

Workman/Party I-Represented by Adv. Shri M. S. Bandodkar.

Employer/Party II- Represented by Adv. Shri G. K. Sardesai.

Panaji, dated : 13-9-2000.

**AWARD**

In exercise of the powers conferred under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16th July, 1998, bearing No. IRM/CON/P (157)/98/9774 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s MRF Ltd., Usgao, Ponda, Goa, in terminating the services of Shri Purushottam Dessai, with effect from 14-4-1997 is legal and justified?

If not, to what relief the workman are entitled ?"

2. On receipt of the reference a case was registered under No. IT/66/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The

Workman-Party I (for short, "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was the member of the Goa MRF Employees Union along with the other workers of the Employer-Party II (for short, "Employer"). That in order to break the unity of the workers who are the members of the said union the employer started harassing and victimizing the office bearers of the said union and its other members. By letter dated 23-1-97 the workman was charge sheeted alleging that he had assaulted one Mr. Motiram Naik while he was on duty in the 1st shift. That the workman submitted his explanation vide his letter dated 19-2-97 to the charge sheet denying the allegations made against him. That thereafter the employer conducted enquiry against him. The workman contended that the enquiry was held in violation of the principles of natural justice and the Inquiry Officer acted bias in favour of the management. That the Inquiry Officer did not conduct the enquiry in a fair and proper manner and on completion of the enquiry the Inquiry Officer submitted his findings to the management. That on receipt of the findings the workman was issued a show cause notice dated 2-4-97 to show cause as to why he should not be dismissed from service. That the workman requested for 15 days time to submit his explanation which was not granted and thereafter he received an order dated 14-4-97 from the employer stating that he was dismissed from service with immediate effect. The workman challenged the enquiry on various grounds set out in his statement of claim. The workman also contended that the findings given by the Inquiry Officer are perverse as also the punishment awarded to him is disproportionate to the charges of misconduct levelled against him. The workman therefore pray that the dismissal order be set aside and he may be ordered to be reinstated in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb.4. The employer admitted of having issued a charge sheet dated 23-1-97 to the workman and that he was suspended pending enquiry. The employer stated that the workman did not submit any explanation to the charges and vide notice of enquiry dated 21-1-97 the workman was informed that enquiry would be conducted into the charges levelled against him and the name of the Inquiry Officer appointed by the employer to conduct the enquiry was also mentioned in the said notice. Thereafter the workman submitted his reply to the charge sheet on 19-2-97. The employer submitted that an enquiry was conducted into the charge sheet issued to the workman and the workman was given full opportunity to defend himself in the enquiry. The employer, denied that the enquiry was conducted in violation of the principles of natural justice or that the inquiry Officer acted bias in favour of the management. The employer stated that on completion of the enquiry the Inquiry Officer submitted his findings and on receipt of the said findings the management concurred with the same and after considering the past records of the workman and also considering the gravity of the misconducts proved, the



employer decided to dismiss the workman from service. The employer stated that the findings given by the Inquiry Officer are based on the evidence on record. The employer denied that the punishment awarded to the workman is disproportionate to the charges levelled against him. The employer stated that the dismissal order passed against the workman is legal and justified and the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for the evidence of the workman on preliminary issues. After the evidence of the workman was partly recorded the parties submitted that the dispute between them was amicably settled. The workman and the employer filed the terms of settlement dated 15-12-99 at Exb. 13 along with an application dated 24-7-2000 praying that consent award be passed in terms of the said settlement dated 15-12-99. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 15-12-99 Exb. 13.

#### ORDER

It is now agreed that Mr. Purushottam Dessai will be reinstated with the company at its Goa Unit I with effect from 17-12-1999 with continuity of his service and his old employee No. i.e. 1964 will be allotted back to him. Mr. Purushottam Dessai will not be eligible for any back wages for the period 14-4-97 to 16-12-99.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/5430

The following Award dated 18-10-2000 in Reference No. IT/20/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 1st November, 2000.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit. J. Agni, Honb'le Presiding Officer)

Ref. No. IT/20/92

Shri Shivmurthi Kallamani,  
Rep. by Goa Trade & Commercial  
Workers Union,  
Velho's Building, 2nd Floor,  
Panaji-Goa.

... Workman/Party I

v/s

The Sarpanch,  
Gram Panchayat Sankhali  
Haravalem-Virdi,  
Sanquelim Goa (since dissolved)  
by his Successor,  
The Administrator,  
Sanquelim Municipal Council,  
Sanquelim Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri S. A. Parab.

Panaji, dated: 18-10-2000

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14-12-1992 bearing No. 28/52/91-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Gram Panchayat, Sankhali, Harvelem-Virdi, Sankhali Goa, in terminating the services of Shri Shivmurthi Kallamani, Sweeper with effect from 21-11-1990 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/20/92 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "union") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the union are that Shivmurthi Kallamani was employed as a sweeper with the Gram Panchayat, Sankhali, Harvelem-Virdi, Sankhali Goa, (for short, "employer") from January, 1984. That he was issued a memo dated 20th November, 1990 by the employer stating that he was found irresponsible in performing his duties and that from his behaviour it appeared that he was not interested to obey the instructions of the employer and further that he was temporarily suspended from 21-11-1990. That thereafter the workman by letter dated

20-11-1990 requested the Sarpanch to revoke the suspension order as his suspension was temporary and more than one month had passed. That the workman also from time to time and always carried out instructions in a responsible manner. That thereafter intervention of the office of the Asst. Labour Commissioner, Mapusa, was sought and in the proceedings held by him the employer filed written statement stating that the workman was a casual worker and his services were terminated on 21st November, 1990 because of his negligence in his duties and that he was reporting for work under the influence of alcohol. The union contended that the employer ought to have held an enquiry prior to termination of service of the workman. The union contended that the workman ought to have been given an opportunity to submit his explanation to the charges and having not done so, the principles of natural justice are violated. The union contended that the extreme punishment awarded to the workman is disproportionate to the gravity of the misconduct. The union thereafter claimed that the termination of services of the workman Shri Shivmurthi Kalamani is illegal and unjustified and he is entitled to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer denied that the workman was in its regular service. The employer stated that the workman was employed for a short and temporary period as per the exigency of the work, and as per the availability of the funds with the employer. The employer stated that the workman was in the habit of neglecting his duties and he would disobey his superiors constantly and without any reason under the influence of liquor and picked up quarrels with the office staff of the employer while on duty. The employer stated that the workman was given several warnings and also was giving several opportunities to improve his behaviour while on duty but since no improvement was shown by him there was no other alternative but to suspend him temporarily from 21st November, 1990. The employer stated that there was no work with the employer for the workman and also there was paucity of funds. The employer stated that since the workman was employed on temporary basis on daily wages and as such he was not entitled to any relief as claimed by him. The union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties following issues were framed at Exb. 7.

1. Whether the reference is misconceived and bad in law as contended in para. 1 of the written statement?
2. Does the Party I/Workman prove that the order of termination of his services w.e.f. 21-11-90 is not legal and justified?
3. Does the Party II/Employer prove that the Party I was temporary employee on daily wages?

4. Whether the Party I is entitled to any relief?

5. What Award or Order?

5. After the issues were framed the evidence of the workman was recorded, and the case was fixed for the evidence of the employer. However, before evidence of the employer was recorded the Advocate for the employer filed an application dated 10-11-97 at Exb. 10 stating that the Village Panchayat of Sanquelim has been converted into Municipality namely Sanquelim Municipality and prayed that notice be issued to the said Municipality. He also produced the copy of the Official Gazette in support of his contention that Village Panchayat of Sanquelim was converted into Sanquelim Municipality. Thereafter the union filed an application dated 4-12-97 at Exb. 11 praying for adding Sanquelim Municipal Council as party to the proceedings. Notice of the said application was given to the said Municipal Council who was duly served with the said notice. The said council did not object to its joining as a party to the proceedings. This Tribunal thereafter passed an order dated 26-3-98 to the effect that the Sanquelim Municipal Council shall be brought on record in the following manner.

"The Sarpanch,  
Gram-Panchayat Sankhali-Haravlem-Virdi,  
Sanquelim-Goa (Since dissolved)  
by his Successor, The Administrator,  
Sanquelim Municipal Council,  
Sanquelim-Goa."

After the said municipal council was brought on record in the manner stated above the case was fixed for the evidence of the said Council. The case was adjourned twice at the request of the Council and on 4-9-98 the date on which the case was fixed for the evidence of the council, again adjournment application was fixed by the Advocate for the Council seeking adjournment on the ground that though he has been trying to contact the Council, the Council is not taking any interest. The adjournment application was opposed by the union. Since the Advocate for the Council had himself stated that the Council is not taking any interest in the matter, and adjournment was granted earlier two occasions, the evidence of the Council was closed and the case was fixed for hearing final arguments. Thereafter Adv. Shri Narvekar who was representing the Council filed an application for permission to withdraw the wakalatnama filed by him on behalf of the Council and he also produced the copy of the Registered A/D notice dated 19-11-98 given to the Council by him. The said application was allowed and Adv. Shri Narvekar was permitted to withdraw the wakalatnama filed by him on behalf of the council and final arguments were heard from both the parties.

6. My findings on the issues are as follows:

- Issue-No. 1: In the negative.
- Issue No. 2: In the affirmative.
- Issue No. 3: As per para. 9 below.
- Issue No. 4: As per order below.



### Reasons

7. *Issue No. 1:* The employer has taken the defence that this Tribunal has no jurisdiction to entertain and decide the reference as the Panchayat was governed by the Special law that is Goa, Daman and Diu Village Panchayat Regulation, 1962. The burden was on the employer to prove this issue. However, no evidence whatsoever has been led by the employer in the present case, nor the employer has advanced any submissions to prove that this Tribunal has no jurisdiction to entertain the reference. In the cross examination of the workman also nothing has been brought on record to show that this Tribunal has no jurisdiction. In fact the employer did not put even a suggestion to the effect that this Tribunal has no jurisdiction. Even then I have gone through the Goa, Daman and Diu Village Panchayat Regulation, 1962. There is no provision in the said Regulation which deals with termination of service of the employees of the Panchayat. The said regulation does not provide for the procedure for termination of service of an employee nor it provides for appeals or revision against the order of termination of service. Therefore there is no substance in the contention of the employer that because the Panchayat is governed by Goa, Daman and Diu Village Panchayat Regulation, 1962, the reference is not maintainable. The employer never contended that the workman Shri Shivamurthi Kalamani is not a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 or that the Village Panchayat Sankhali, Haravlem-Virdi, Sanquelim-Goa is not an "industry" as defined under the Industrial Disputes Act, 1947. No suggestion whatsoever has been put to the workman Shri Kalamani in his cross examination that he is not "workman" or that the Village Panchayat Sankhali, Haravlem-Virdi, Sanquelim-Goa is not an "industry". In view of the above the union was entitled to raise the dispute on behalf of the workman as regards his termination of service and the Government was entitled to make the reference of the dispute to this Tribunal for adjudication. In the circumstances, I hold that the employer has failed to prove that the reference is misconceived, in law or that this Tribunal has no jurisdiction to entertain and decide the reference. I, therefore answer the issue No. 1 in the negative.

8. *Issue No. 2 and 3:* Both these issues are taken up together as they are interrelated. It is the contention of the union that the workman Shri Kalamani was employed with the employer Panchayat since the year 1984. In his statement of claim he has stated that he was employed as sweeper. However in his deposition he has stated that he was employed as an electrical helper but in his cross examination he has stated that though he was employed as an electrical helper he was also doing the work of sweeping. The employer Panchayat has admitted that the workman Shri Kalamani was employed as a sweeper but it is their contention that he was employed as a sweeper on temporary basis on daily wages. Neither in the written statement nor in the evidence of the union it is denied by the employer Panchayat that the workman Shri Kalamani was

employed from the year 1984. In the present case no evidence has been led on behalf of the employer. No evidence either oral or documentary has been produced by the employer to prove that the workman Shri Kalamani was employed temporarily on daily wages. In the cross examination of the workman it was suggested to him that he was being paid on the date when he attended the work and this suggestion was denied by him. If the workman was employed on temporary basis and he was paid on the date when he worked where was the question of issuing to him a memo dated 20th November, 1990 stating that he was found irresponsible in performing his duties and suspending him temporarily from 21st November 1990? Also the employer themselves have produced the notices dated 6-5-87, 5-12-87 and 11-9-87 at Exb. E-1 colly. These notices are issued to the workman for remaining absent. In these notices it is alleged that due to the absence of the workman work in the Panchayat is affected, and he has been asked to show cause why his services should not be terminated. The above documents themselves show that the workman was not appointed temporarily on daily wages nor that he was being paid on the date he worked. In my view in the absence of any evidence from the employer it has to be held that the workman Shri Kalamani was appointed as a sweeper on permanent basis.

The employer Panchayat has not disputed that the services of the workman Kalamani were terminated from 21-11-90. There is no specific letter of termination of services of workman. In his deposition the workman has stated that the Sarpanch of the Panchayat told him that his services were terminated, and that thereafter he raised the dispute through the union vide letter dated 14-2-91. In the written statement the employer Panchayat did not deny that the services were terminated w.e.f. 21-11-90. In the reply filed before Asst. Labour Commissioner, which has been produced at Exb. W-4, they admitted that the services of the workman were terminated and stated that the reasons for termination of service were mentioned in the letter dated 15th April, 1991 addressed to the Asst. Labour Commissioner. The copy of the said letter is not on record. In the cross examination it is suggested to the workman that he was absenting from work and he was attending the work under the influence of alcohol. The employer panchayat has also produced the notices at Exb. E-1 colly to show that because the workman was remaining absent the said notices were issued to him. The workman has not admitted that he was remaining absent or that he was attending the work under the influence of alcohol. The notices which are produced at Exb. E-1 colly were issued in the year 1987 whereas the services of the workman are terminated in November 1991, that is, almost four years after the said notices were sent. The Union has produced the minutes of the meeting dated 6-9-91 held by the Asst. Labour Commissioner, Mapusa, at Exb. W-5. The employer has not challenged the said minutes. In the said minutes it is clearly recorded that the workman was negligent in his duties and he was reporting for work under

influence of alcohol. From the above evidence it is evident that the services of the workman Shri Kallamani were terminated by the employer Panchayat for acts of misconduct. There is no evidence that any charge sheet was issued to the workman or any enquiry was held against him prior to termination. Since the services of the workman were terminated on account of misconduct alleged against him, the burden was on the employer to prove the said misconducts by leading evidence before this Tribunal. However, in spite of the opportunity given the employer did not lead any evidence in the matter and consequently the misconducts alleged against the workman are not proved. This being the case the termination of service of the workman becomes illegal and unjustified. In the circumstances, I hold that the employer has failed to prove that the workman Shri Shivmurthi Kallamani was a temporary employee on daily wages. I further hold that the union has succeeded in proving that the termination of services of the workman Shri Shivmurthi Kallamani is not legal and justified. I, therefore answer the issue no. 2 in the affirmative and the issue No. 3 in the negative.

9. Issue No. 4: It has been held by me that termination of service of the workman Shri Shivmurthi Kallamani is not legal and justified. Now the question for determination is what relief should be awarded to the workman. The normal rule is that when the order of termination of service is held to be illegal and unjustified, the workman should be reinstated with full back wages unless there are circumstances which do not warrant reinstatement or full back wages. In the present case, I do not find any reason to deviate from the normal rule. There is no evidence from the employer to show that the past conduct of the workman was bad so as not to award reinstatement or full back wages. There is also no evidence on record that the workman was gainfully employed after termination of his service. I am therefore of the view that in the present case it is just and proper to award reinstatement to the workman with full back wages. I, therefore, hold that the workman Shri Shivmurthi Kallamani is entitled to reinstatement in service with full back wages and continuity in service.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the action of the Gram-Panchayat, Sankhali, Haravlem-Virdi, Sankhali-Goa, in terminating the services of the workman Shri Shivmurthi Kallamani, Sweeper, with effect from 21-11-1990 is not legal and justified. The Administrator, Sanquelim Municipal Council, Sanquelim-Goa, is directed to reinstate the workman Shri Shivmurthi in service with full back wages and other benefits and continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/6356

The following Award dated 21-11-2000 in Reference No. IT/20/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 22nd December, 2000.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/20/89

Shri Krishna G. Naik Borkar  
(Since deceased)  
Kharwada, Borim,  
Ponda -Goa.

... Workmen/Party-I

v/s.

M/s Kadamba Transport Corporation  
Ltd., Panaji-Goa.

... Employer/Party II

Employer/Party II -Represented by Adv. P. J. Kamat.

Panaji, dated: 21-11-2000

#### AWARD

The Hon'ble High Court of Judicature at Bombay, Panaji Bench, Panaji-Goa by oral judgement dated 11th January, 1989 passed in Writ Petition No. 21/87 referred the following issue to this Tribunal for adjudication.

"Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji in terminating the services of the Shri Krishna G. Naik Borkar, Driver, with effect from 18-3-1986 is legal and justified?

If not, what relief is the workman entitled to ?"

2. On receipt of the order from the Hon'ble High Court registered A/D notices were issued to the parties and in pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") as a driver and he worked with the

employer faithfully and to the best of his ability. That on 29-6-85 he was on duty on the bus bearing No. GDX-78 plying on Margao to Gaodongri-Avem route. The said bus was driven by the workman and one Shri Tulshidas Nagvenkar was conductor of the said bus. That after the bus had departed from Gaondongri stop and was proceeding to Avem, the workman asked Mr. Nagvenkar to clean the glass wind screen in front of the driver because vapour had accumulated on the said glass due to heavy rains. That while the glass was being cleaned the workman saw a passenger and applied the brakes due to which the conductor Mr. Nagvenkar lost his control and fell on the driver seat which was occupied by the workman. That at that time Assistant Traffic Inspector Mr. Kiran Faldessai who was in front of nearby liquor shop came running near the bus and alleged that the conductor was driving the bus. That the workman and the conductor told him the facts but Mr. Faldessai would not listen and threatened that he would teach both a lesson. That apprehensive of the threats given by Mr. Kiran Faldessai the workman as well as the conductor wrote letters dated 22-6-85 to the Margao Depot Manager giving the details of the facts. That thereafter the workman received a charge sheet dated 29-6-85 alleging that the conductor was found driving the vehicle GDX-78 at the time of checking by Mr. Faldessai and that the workman failed to give satisfactory reason and that as per the Certified Standing Orders of the employer the above said act constituted misconduct. That the workman was placed under suspension by order dated 23-6-95 pending enquiry. That the workman submitted his reply to the charge sheet denying the charges made against him. That the workman participated in the enquiry which was not held in a fair and proper manner and it was held in violation of the principles of natural justice and fairplay. That the Inquiry Officer gave his findings dated 18-2-86 and he received the copy of the findings along with the show cause notice dated 24-2-86. That in the findings the Inquiry Officer had held the workman guilty of the charges levelled against him. That the workman replied to the show cause notice. However, the General Manager by his order dated 18-3-86 held that the reply of the workman was not satisfactory and hence he was dismissed from service forthwith. That the workman preferred appeal against the dismissal order but the same was also dismissed. That the workman therefore raised the industrial dispute demanding reinstatement in service with full back wages. That the conciliation proceedings held by the Asst. Labour Commissioner ended in failure and on receipt of the failure report the Government vide letter dated 19th September, 1986 informed the workman that the Government did not consider it fit to refer the dispute to the Tribunal. That the workman challenged the decision of the Government in the Hon'ble High Court of Bombay, Panaji, Goa, by filing a Writ Petition No. 21/87 which was allowed by the Hon'ble High Court and the present dispute was referred to this Tribunal. The workman contended that he had not committed any act of misconduct as alleged in the charge sheet and the findings of the Inquiry Officer are not based on

the evidence on record. The workman contended that termination of his services by the employer is illegal and unjustified and hence he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 3. The employer stated that on 19th June 1985 the workman was working as a driver on the route Margao-Gaodongri-Avem. It was found that the workman had unauthorisedly given the bus GDX-78 for driving to the conductor by name Shri T. Nagvenkar at about 18.00 hours when the bus was about to reach Gaodongri stop and that it was also found that the workman was standing behind the driver's seat giving guidance to the Conductor in driving the said bus. The employer stated that the above act on the part of the workman amounted to misconduct under the Certified Standing Orders and therefore a charge sheet was issued to the workman for the acts of misconduct committed by him. The employer stated that the reply which was given to the charge sheet was not found satisfactory and therefore enquiry was conducted into the charge sheet and the workman was given full opportunity to defend himself in the enquiry. The employer stated that after the enquiry was completed the Inquiry Officer submitted his findings and the General Manager who is the competent authority after going through the proceedings of the enquiry and the findings wherein the workman was held guilty of the charges issues, a show cause notice to the workman asking him to submit his explanation as to why he should not be dismissed from service and on receipt of the explanation from the workman a dismissal letter dated 7-3-86 was issued to the workman. The employer denied that the enquiry was not conducted in a fair and proper manner or that it was conducted in violation of the principles of natural justice. The employer denied that the findings of the Inquiry Officer are not based on the evidence on record. The employer contended that its action of terminating the services of the workman is legal and justified and hence the workman is not entitled to any relief as claimed by him.

4. On the pleadings of the parties, issues were framed at Exb. 4. During the pendency of the proceedings Adv. Shri Nigalye who was representing the workman submitted that the workman had expired and that he wanted to file an application to bring on record the legal representatives/heirs of the deceased workman. In spite of the opportunities given the legal Heirs/representative of the deceased workman were not brought on record and ultimately Shri A. N. Nigalye submitted that the legal heirs/representatives of the deceased workman are not known. Thereafter Adv. P. J. Kamat representing the employer filed an application praying that the reference be rejected for non prosecution because no legal heirs of the deceased workman are on record. In order to adjudicate the dispute, there must be two parties before the Tribunal i.e., the workman and the employer. In the present case Adv. A. Nigalye who was representing the workman submitted that the workman had expired and sufficient

time was given to him to bring on record the legal heirs/representatives of the deceased workman. However, Advocate A. Nigalye submitted that he is unable to file the application as the legal heirs of the deceased workman are not known. Consequently, no legal heirs of the deceased workman came to be brought on record. Since the dispute was raised by the deceased workman and his legal heirs/representatives are not on record to pursue the matter, there is no party before the Tribunal in whose favour the relief if at all, can be granted. This being the case, in my view the reference does not survive.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference does not survive as there are no legal heirs/representatives of the deceased workman on record.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/1342

The following Award dated 9-2-2001 in Reference No. IT/61/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 13th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/01/98

Workmen rep. by the President  
Goa Trade and Commercial

Workers Union,  
Velho Bldg., 2nd Floor, ... Workmen/Party I

V/s.

The Chairman,  
M/s. Zuari Agro Chemicals  
Employees Co-operative  
Society Ltd.,  
Zuarinagar, Goa. ... Employer/Party II

Workman/Party I Represented by Adv. Shri Suhas Naik.

Employer/Party II Represented by Adv. Shri G. K. Sardesai.

Panaji, dt. 9-2-2001

#### AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 17-7-98 bearing No. IRN/COM/SG/(56)/97/9784 referred the following dispute for adjudication of this Tribunal.

"whether the demands raised by the Goa Trade and Commercial Workers Union vide the letter No. Lt/Charter/ZAC Employees Co-operative Society/02/89 dated 1-4-89, before the management of M/s. Zuari Agro Chemicals Employees Co-operative Society Ltd., Zuarinagar are justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference the case was registered under No. IT/61/98 and registered A/D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen Party-I (for short "union") filed its statement of claim at Ext. 3. The facts of the case in brief as pleaded by the union are that the employer Party-II (for short "employer") is a Co-operative Society and it makes available household and other domestic goods to its share holders who are basically the employees of Zuari Agro Chemical Ltd. That the workers of the employers Society unionized themselves under the banner of Goa Trade and Commercial Workers Union (AITUC) and the said Union raised Charter of demands on behalf of the workers demanding enhancement and revision in their pay scales and other allowances. That on receipt of the said charter of demand the employer started resorting to unfair labour practices and also started victimizing and harassing the workers. That after the charter of demands was submitted several reminders were sent to the

employer requesting to resolve the issues and to arrive at an amicable settlement but the employer remained adamant and such the issues remained unsolved. That thereafter the dispute was raised before the Dy. Labour Commissioner, Margao vide letter dated 13-3-96. That the said dispute was admitted in conciliation and the said conciliation proceedings ended in failure as none appeared on behalf of the employer before the Conciliation Officer. The Union contended that the demands raised by them on behalf of the workers of the employer are fair, proper and justified.

3. The employer filed written statement at Exb. 6. The employer denied that they were paying low wages to the workers or that the service conditions are very poor or that the workers were being victimised and harassed. The employer stated that the wages and other conditions of services of the workers are fair and reasonable and in conformity with the paying capacity of the employer. The employer denied that its financial capacity is sound and stated that it has been suffering losses for the last several years. The employer stated that the demands raised by the union on behalf of the workers are unreasonable and not fair and justified. The employer stated that the present wages structure being fair and proper no further revision in the pay deserves to be granted and the employer does not have the financial capacity to bear any increase in the present wage burden and stated that such increase will result into closure of the establishment. The employer therefore prayed that the charter of demands raised by the union vide letter dated 13-3-96 be rejected. The union thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and the case was fixed for evidence of the Union. Several opportunities were given to the union to lead evidence in support of the demands made by the union on behalf of workmen. However inspite of the opportunities given, the evidence was not lead by union. Subsequently on 31-1-2001. The union filed an application at Exb. 12 stating that the union is withdrawing its statement of claim filed on behalf of the workmen. The copy of the said application was served on the employer. The employer stated that since the union is withdrawing the statement of claim the dispute does not exist and as such no dispute award may be passed.

5. Merely because the union has withdrawn the statement of claim, it does not mean that the dispute does not exist. The dispute still exists but the question is whether the reference can be answered in favour of the Union.

6. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engineering Services. V/s. Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 pg. 393 has held that the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. The Allahabad High Court in the case of V. K. Raj Industries V/s. Labour Court (I)

and other reported in 1981 (29) FLR 194, has held that the proceedings before the Industrial Court are Judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

7. In the present case the dispute on demands was raised by The Union on behalf of the workers of employer. The burden was on the Union to prove that the demands raised against the employer are legal and justified. The union was given sufficient opportunity to lead evidence in the matter. However no evidence come to be led by the union and instead the union filed application stating that the statement of claim filed by it on behalf of the workmen was being withdrawn.

8. Therefore, as good as, there are no pleadings on behalf of the union in the present case. The Union has thus failed to discharge the burden case on it. The judgement of the Bombay High Court and that of the Allahabad High Court in the cases referred to herein above squarely apply to the present case.

In the absence of statement and/or evidence from the union, the reference cannot be answered in favour of the union. In the circumstances I hold that the Union has failed to prove that the demands raised by it against the employer vide letter dated 1-4-89 are justified.

Hence I pass the following order.

#### ORDER

It is hereby held that the demands raised by Goa Trade and Commercial Workers Union vide letter No. Lt./Charter/ZAC Employees Co-operative Society/02/89 dated 1-4-89 before the management of M/s. Zuari Agro Chemicals Employees Co-operative Society Ltd., Zuarinagar, are not justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-.  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Order**

No. CL/Pub-Awards/2000/1422

The following Award dated 28-2-2001 in Reference No. IT/74/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 19th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI.

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/74/98

Workmen Rep. by  
The President,  
Goa Trade and Commercial  
Workers Union,  
Velho Bldg.,  
Panaji-Goa.

... Workman/Party I

V/s.

The Chairman,  
M/s. East Quepem Consumers  
Co-operative Society Ltd.,  
Curchorem-Goa.

... Employer/Party II

Workman/Party I Represented by Adv. Shri Suhas Naik.

Employer/Party II Represented by Adv. Shri A. G. Nigalye

Panaji, dated: 28-2-2001.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 27th July, 1998 bearing No. IRM/CON/SG/(54)/97/9885 referred the following dispute for adjudication by this Tribunal.

"Whether the demands raised by the Goa Trade and Commercial Workers' Union vide their letter No. Lt/East Quepem Consumers Co-op. Society Ltd./02/96 dated 23-10-1996, before the management of M/s. East Quepem Consumers Co-operative Society Ltd., Curchorem, are justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/74/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "union") filed statement of claim at Exb. 4. The facts of the case in brief as pleaded by the union are that the said union represents the workers of the Employer-Party II (for short, "employer"). That the employer makes available house hold and other domestic goods besides LPG gases to the consumers and it is having various branches in and around Quepem Taluka. That the workers of the employer unionised themselves and became its members and this fact was made known to the employer vide letter dated 13-10-96. That thereafter by letter dated 23-10-96 the union raised charter of demands against the employer asking for enhancement and revision in their pay scales and other allowances. That on receipt of the said letter the employer started victimising and harassing the workers including issuing charge sheets and notices to the workers. That the employer had been paying very low wages to its workers in comparison to wages paid to the workers in other Societies within the region. That the cost of living having been increasing day by day and the workers were finding it difficult to maintain themselves with the wages paid to them. That inspite of several reminders sent to the employer requesting it to resolve the issue and arrive at an amicable settlement, the employer remained adamant and therefore the dispute was raised before the Dy. Labour Commissioner and which was admitted in conciliation. That since the employer failed to appear before the Dy. Labour Commissioner the conciliation proceedings ended in failure and the failure report dated 6-7-87 was admitted to the Government. The Union claimed that the demands raised by it on behalf of the workers are fair, proper and justified and hence the said demands be granted.

3. The employer filed written statement at Exb. 5. By way of preliminary objection the employer stated that the reference is not maintainable because the employees on whose behalf the dispute is raised by the union are not "workmen" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 and the employer is not an "industry" within the meaning of Sec. 2(j) of the Industrial Disputes Act, 1947 nor an "Industrial establishment" within the meaning of Sec. 2(k) of the said Act. The employer also stated that the Goa Trade & Commercial Workers Union has no locus standi to represent its employees. The employer denied that its workers unionised themselves under the banner of Goa Trade & Commercial Workers Union. The employer stated that demands raised vide letter dated 23-10-96 are unjustified and the employer is not in a position to revise the pay scales of its employees and grant further allowances as demanded by union. The employer denied that low wages are being paid to the workers or that their service conditions are poor. The employer denied that it resorted to unfair labour practice or started victimising and harassing its workers. The employer



denied that it is making huge profits or that its financial position is good or that the wages and other service conditions of the workers in other Societies within the region are better and very high. The employer stated that the demands made by the union on behalf of the workers are unjustified. The employer stated that the failure report submitted by the Dy. Labour Commissioner and reference made to this Tribunal are without jurisdiction. The employer stated that any additional liability on the employer will put unbearable financial burden on the employer and its very existence will be at stake. The employer stated that since the demands raised by union are unjustified, no relief may be granted to the workers. Thereafter the union filed rejoinder at Exb. 6.

4. On the pleadings of the parties issue were framed at Exb. 7 and thereafter the case was fixed for the evidence of the union. In spite of several opportunities given the union did not lead any evidence and ultimately filed an application dated 24-10-2000 stating that they were unable to proceed further and lead evidence in the matter. The employer also submitted that they were not leading any evidence in the matter as the union has failed to lead evidence. Thus no evidence was led on behalf of the union in support of the demands raised by them on behalf of the workers nor any evidence was led by the employer in support of their various contentions. The Allahabad High Court in the case of V. K. Raj Industries v/s Labour Court and Others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court by the principles underlying the said Act are applicable. The High Court held that it is well settled that if a party challenges the validity of an order the burden lies upon to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or to produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. Similar principles are laid down by the Bombay High Court, Panaji Bench in case of V.N.S. Engg. Services V/s Industrial Tribunal, Goa Daman and Diu and Another reported in FJR Vol. 71 page 393. The Bombay High Court has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provisions of Rule 10B of Industrial Disputes (Central) Rules 1957 clearly indicates that the Party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. In the present case the dispute was raised

by the union on behalf of the workman as regards the charter of demands raised by them against the employer. According to the union the demands raised by them vide letter dated 23-10-96 were justified. The reference of the dispute was made by the Government at the instance of union. Therefore applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the Union to prove that the demands raised by them are justified. However, in spite of the opportunities given the union did not lead any evidence in the matter. Therefore there is no material before me to hold that the demands raised by the union vide letter dated 23-1-96 are justified. In the absence of any evidence the reference cannot be answered in favour of the union. In the circumstances, I hold that the union has failed to prove that the demands raised by them against the employer vide letter dated 23-10-96 are justified.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the demands raised by the Goa Trade & Commercial Workers Union vide letter dated 23-10-96 before the management of M/s. East Quepem Consumers Co-operative Society Ltd., are not justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/1423

The following Award dated 1-3-2001 in Reference No. IT/40/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio  
Joint Secretary.

Panaji, 19th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI.

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/2000

Workmen Rep. by  
The President,  
Goa Mazdoor Union,  
Post Box 119,  
Dourado Building, 1st Floor,  
Near Municipal Market,  
Vasco-da-Gama.

... Workmen/Party I

V/s.

M/s. Kores (India) Ltd.  
Carbon Unit, Shed No. 52  
Plot No. L-71, Verna  
Electronic City,  
Verna-Goa.

... Employer/Party II

Workman/Party I Represented by Adv. Shri H. Dourado.

Employer/Party II Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated : 1-3-2001.

## AWARD - I

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 4th May, 2000 bearing No. IRM/CON/(92-4A)/99/2422 referred the following dispute for adjudication of this Tribunal.

(1) Whether the action of the management of M/s. Kores (India) Limited (Carbon Unit), Verna-Goa, in dismissing the following workmen from the services with effect from 3-2-2000, is legal and justified?

1. Nilesh Naik, Cutter.
2. Piedade Dias, Trainee.
3. Anand Haldankar, Unwinder.
4. Paresh Sawant, INK Mixer Operator

(2) If not, what relief the above four workmen are entitled?

2. On receipt of the reference the case was registered under No. IT/40/2000 and registered A/D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen/Party I (for short 'Union') was represented by Adv. Shri H. Dourado, who is also the President of the Union namely Goa Mazdoor Union. The employer/Party II (for short 'employer') was represented by Adv. Shri M. S. Bandodkar. The Case was fixed for filing of the statement of the claim on behalf of the workmen. Both the parties

however submitted that the matter is likely to be settled and accordingly at their request the case was fixed on 27-2-2001 at 10.30 a.m. for filing of the terms of settlement.

3. Accordingly on 27-2-2001 the date when the case was fixed for hearing the Adv. Shri Dourado appeared along with the workmen Shri Anand Haldankar, Shri Paresh Sawant and Shri Piedade Dias and Adv. Shri M. S. Bandodkar appeared on behalf of the employer. They submitted that a settlement was arrived at in respect of the above said three workmen and they filed the terms of settlement dated 27-2-2001 at Ext. 4. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen Shri Anand Haldankar, Shri Paresh Sawant and Piedade Dias. The said terms of settlement are duly signed by Shri Dourado as the President of the Union along with the workmen Shri Anand Haldankar, Shri Paresh Sawant and Shri Piedade Dias. On behalf of the management, the said terms are signed by Shri Ravi Kendoi, their constituted Attorney. I therefore accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 27-2-2001 Ext. 4 which is in relation to the workmen Shri Anand Haldankar, Shri Paresh Sawant and Piedade Dias.

## ORDER

1. It is agreed between the parties that following workmen who are concerned in the reference shall be paid an amount mentioned against their names in full and final settlement of their claims arising out of their employment with the company and arising out of the reference.

	Name	Amount in Rs.
1.	Anand Haldankar	Rs. 7000/- (Rupees seven thousand only)
2.	Paresh Sawant	Rs. 7000/- (Rupees seven thousand only)
3.	Piedade Dias	Rs. 7000/- (Rupees seven thousand only)

It is further confirmed by the workmen concerned in the reference that in view of the clause No. (1) above they shall have no claim of whatsoever nature against the Company including any claim of reinstatement or re-employment. The amount agreed shall be paid within a week.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Order**

No. CL/Pub-Awards/2000/1424

The following Award dated 7-3-2001 in Reference No. IT/30/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 19th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/30/97

Shri Joaquim S. Mascarenhas,

Rep. by his legal heirs

1. Smt. Maria Vincentina Fernandes

2. Shri Leo Godfrey Mascarenhas

Murida Grande, Nuvem,

Salcete-Goa.

... Workman/Party I

V/s.

The Chairman,

M/s. Nuvem Service Coop.

Society Ltd.,

Nuvem, Salcete-Goa.

... Employer/Party II

Workman/Party-I represented by Shri Subhash Naik.

Employer/Party-II represented by Adv. Shri S. Cairo.

Panaji, dated 7-3-2001.

**AWARD**

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2nd May, 1997 bearing No. IRM/CON/SG/(75)/96/2156 referred the following dispute for adjudication of this Tribunal.

Whether the action of M/s. Nuvem Service Co-operative Society Limited, Nuvem-Goa, in terminating the services of Shri Joaquim Santan

Mascarenhas, Weighman, with effect from 11-5-1996 is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference, the case was registered under No. IT/30/97 and registered A/D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short 'workman') was represented by Adv. R. Menezes and the employer/Party-II (for short 'employer') was represented by Adv. Shri S. Cairo. Several opportunities were given to the workman to file his statement of claim. However inspite of the opportunities given no statement of claim was filed on behalf of the workman and since none appeared for the employer on 13-10-97 the case was fixed for passing award. However before the award was passed an application dated 28-10-97 was filed on behalf of the legal heirs of the workman stating that the workman had expired on 6th September, 97 leaving behind Smt. Maria Vincentina Fernandes and Shri Leo Godfrey Mascarenhas as his legal heirs. The said application was supported by the death certificate of the workman. In the said application it was prayed that the above said legal heirs be brought on record in place of the deceased workman. Notice of the said application was given to the employer and after hearing the parties this Tribunal passed the order dated 13-1-98 allowing the said application and consequently Smt. Maria Vincentina Fernandes and Shri Leo Godfrey Mascarenhas, legal representatives heirs of the deceased workman Shri Joaquim Mascarenhas were brought on record and they were joined as parties to the proceedings.

3. After the legal heirs were brought on record a statement of claim was filed on their behalf at Ext. 6. In the said statement of claim the legal heirs contended that the deceased workman was employed as a weighman with the employer society from 1st October, 83 and he worked continuously till the date of termination of his services. They stated that in the month of May, 1996 the deceased workman had met with an accident and he resumed duties only on 11-5-96 after availing sick leave. However the employer informed him that his services were no longer required and as such his services were terminated w.e.f. 11-5-96. They claim that the services of the deceased workman were terminated in violation of the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947. The legal heirs contended that since the termination of services of the deceased workman is illegal and unjustified, they are entitled to full back wages and all other benefits from the date of termination of services of the deceased workman till the date of his death.

4. The employer filed written statement at Ext. 7. The employer denied that it is a industry within the definition

of Industry as given in Industrial Disputes Act, 1947. The employer also denied that the deceased workman was employed as weighman since 1-10-83 and stated that he was not a workman as defined in the Industrial Disputes Act, 1947. The employer stated that the deceased workman was always negligent and irresponsible in discharging his duties and many times used to come under intoxication of liquor during working hours. The employer denied that the services of the deceased workman were terminated and stated that the deceased workman had failed to report for duties and had abandoned his services. The employer denied that the legal heirs of the deceased workman are entitled to any relief as claimed by them.

5. On the pleadings of the parties issues were framed at Ext. 8 and the case was fixed for recording the evidence of the legal heirs of the deceased workman. Several opportunities were given to the legal heirs to lead their evidence in the matter. However inspite of the opportunities given no evidence came to be lead on behalf of the legal heirs of the deceased workman and on 8-8-2000, the date when the case was fixed for hearing Shri Subhash Naik representing the legal heirs submitted that he was closing the evidence on their behalf. Thereafter the case was fixed for the evidence of the employer. However, Adv. Shri Cairo representing the employer submitted that he was not leading any evidence on behalf of the employer. Both the parties submitted that award as may be deemed fit be passed in the matter.

6. The reference of the dispute was made by the Government at the request of the deceased workman as he challenged the action of the employer of terminating his services. It is a settled law that the party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the legality of the said order or the action. The Allahabad High Court in the case of V. K. Raj Industries v/s. Labour Court and others reported in 1981 (29 FLR 194) has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underline the said Act are applicable. The High Court has held that it is a well settled law that if the party challenges the validity of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or to produce the evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. Similar view has been taken by the Bombay High Court, Panaji Bench in the case of V.L.S. Engineering Services V/s. Industrial Tribunal,

Goa, Daman and Diu and another reported in FJR Vol. 71 page 393 has held that the obligation to lead evidence to establish an allegation is on the party making allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10(B) of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

7. As mentioned earlier, in the present case the dispute was raised by the deceased workman that his services were illegally terminated by the employer and the reference of the dispute to this Tribunal was made by the Government at his instance. After the death of the workman his legal heirs were brought on record. They had contended that since the termination of the services of the deceased workman is illegal and unjustified they are entitled to full back wages and other benefits from the date of termination of services till the date of the death of the workman. Applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases the burden of proof was on the Legal heirs to prove that the action of the employer in terminating the services of the deceased workman from 11-5-96 was illegal and unjustified. After the issues were framed, inspite of giving several opportunities the legal heirs did not lead any evidence in the matter and also the employer did not lead any evidence on his behalf. Therefore there is no material before me to hold that the action of the employer in terminating the services of the deceased workman is not legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the deceased workman or legal heirs. In the circumstances I hold that the legal heirs have failed to prove that the action of the employer in terminating the services of the deceased workman w.e.f. 11-5-96 is illegal and unjustified.

Hence I pass the following order.

#### ORDER

It is hereby held that the action of M/s. Nuvem Service Co-operative Society Ltd., Nuvem, Salcete, Goa in terminating the services of the deceased workman Shri Joaquim S. Mascarenhas w.e.f. 11-5-96 is legal and justified. It is hereby further held that the legal heirs of the deceased workman Shri Joaquim Santan Mascarenhas are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,  
Industrial Tribunal.

**Order**

No. CL/Pub-Awards/2000/1425

The following Award dated 1-3-2001 in Reference No. IT/38/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 19th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/38/2000

Workmen represented by the

President,

Goa Mazdoor Union,

Post Box 119,

Dourado Building,

1st Floor,

Near Municipal Market,

Vasco-da-Gama.

Workmen/Party I

V/s.

M/s. Kores (India) Ltd.,

Carbon Unit, Shed No. 52,

Plot No. L-71,

Verna Electronic City,

Verna, Goa.

Employer/Party II

Workmen/Party-I represented by Adv. Shri H. Dourado.

Employer/Party-II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated 1-3-2001.

**AWARD — I**

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4th May, 2000

bearing No. IRM/CON/(92-3A)/99/2423 referred the following dispute for adjudication of this Tribunal.

- (1) Whether the action of the management of M/s. Kores (India) Limited (Carbon Unit), Verna-Goa, in dismissing the following workmen from services with effect from 14-12-1999, is legal and justified?

1. Shri Vinayak Pednekar, Operator
2. Shri Maheshwar Pednekar, Operator.
3. Shri Satish Naik, Trainee Fitter.

- (2) If not, to what relief the above three workmen are entitled?

2. On receipt of the reference the case was registered under No. IT/38/2000 and registered A/D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen/Party-I (for short 'Union') was represented by Adv. Shri H. Dourado, who is also the President of the Union namely Goa Mazdoor Union. The employer/Party II (for short 'employer') was represented by Adv. Shri M. S. Bandodkar. The case was fixed for filing of the statement of the claim on behalf of the workmen. Both the parties however submitted that the matter is likely to be settled and accordingly at their request the case was fixed on 27-2-2001 at 10.30 a.m. for filing of the terms of settlement.

3. Accordingly on 27-2-2001 the date when the case was fixed for hearing the Adv. Shri Dourado appeared along with the workmen Shri Vinayak Pednekar and Shri Maheshwar Pednekar and Adv. Shri M. S. Bandodkar appeared on behalf of the employer. They submitted that a settlement was arrived at in respect of the above said two workmen and they filed the terms of settlement dated 27-2-2001 at Ext. 4. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen Shri Maheshwar Pednekar and Shri Vinayak Pednekar. The said terms of settlement are duly signed by Shri Dourado, as the President of the Union along with the workmen Shri Maheshwar Pednekar and Shri Vinayak Pednekar. On behalf of the management, the said terms are signed by Shri Ravi Kandoi, their constituted Attorney. I therefore accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 27-2-2001 Ext. 4 which is in relation to the workmen Shri Maheshwar Pednekar and Shri Vinayak Pednekar.

**ORDER**

1. It is agreed between the parties that following workmen who are concerned in the reference shall be paid an amount mentioned against their names in full and final settlement of their claims

arising out of their employment with the company and arising out of the reference.

Name	Amount in Rs.
1. Maheshwar Pednekar	Rs. 5600/- (Rupees five thousand six hundred only).
2. Vinayak Pednekar	Rs. 5600/- (Rupees five thousand six hundred only).

It is further confirmed by the workmen concerned in the reference that in view of the clause No. (1) above they shall have no claim of whatsoever nature against the company including any claim of reinstatement of re-employment. The amount as agreed shall be paid within a week.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/2000/1426

The following Award dated 9-2-2001 in Reference No. IT/25/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 19th March, 2001.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/25/95

Shri Ladu Gawde,  
alias Shri Ladu Savoikar,  
Savoi-Verem, Goa.

... Workman/Party I.

V/s.

M/s. Alcon Constructions,  
Velho Building,  
Panaji Goa.

... Employer/Party II

Workman/Party-I represented by Adv. Shri Suhas Naik.

Employer/Party-II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated 9-2-2001.

#### AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 10-4-95 bearing No. 28/10/95-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Alcon Constructions, Panaji-Goa in terminating the services of their workman Shri Ladu Gawde alias Ladu Savoikar with effect from 1-3-1994 is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference the case was registered under No. IT/25/95 and Registered A/D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (for short "workman") filed his statement of claim at Ext. 4. The facts of the case in brief as pleaded by workman are that he was employed with the employer/Party II (for short "employer") w.e.f. 1-11-87 as a Labour. That initially he was working with the employer at the construction site of their project "Apna Bazar" in Vasco for a period of about 4 years and thereafter for about 2 years he worked at the construction site at Patto Centre at Panaji. That since his services were not regularised, though he had worked for 6 years, he requested the employer vide letter dated 1-11-93 to absorb him in regular and permanent services of the employer. That since the employer did not regularise his services, he raised an Industrial Dispute before the Labour Commissioner vide letter dated 30-11-93. That during the pendency of the said dispute the employer arbitrarily terminated his services on 1-3-94 without giving any reason and without paying his legal dues. That by letter dated 2-3-94 he requested the employer to reinstate him in service and the copy of the said letter was sent to the Labour Commissioner. That since inspite of the said letter he was not reinstated, by letter dated 4-4-94 he raised an Industrial Dispute before the Labour Commissioner as regards his illegal termination of services. That conciliation proceedings ended in failure.



The contention of the workman is that termination of his services by the employer is illegal, malafide and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Ext. 6. By way of preliminary objections, the employer stated "that the reference was not maintainable as there was no employer employee relationship and there was no industrial dispute as envisaged under Section 2A of the Industrial Disputes Act, 1947. The employer denied that the workman was employed from 1-11-87 as a labourer. The employer denied that the workman worked at the construction site "Apna Bazar" in Vasco or that he worked at the construction site "Patto Centre" at Panaji. The employer stated that the workman was engaged on daily basis as and when the work of labourer was available and hence the question of absorbing him in regular or permanent services did not arise. The employer denied that the workman had raised an industrial dispute before the Labour Commissioner vide his letter dated 30-11-93 as regards his regularisation of services. The employer denied that the services of the workman were terminated arbitrarily or during the pendency of the dispute before the Labour Commissioner. The employer stated that since the workman was never its employee the question of termination of his services or payment of his legal dues did not arise. The employer admitted that the letter dated 2-3-94 was received from the workman alleging about his illegal termination of services. The employer also admitted that a dispute was raised by the workman before the Labour Commissioner and the conciliation proceedings ended in failure. The Employer stated that there was no appointment of the workman as Labourer by them nor there was termination of his services as alleged by the workman. The employer stated that the workman is not entitled to any relief as claimed by him.

4. On the pleadings of the parties issues were framed at Ext. 8 and thereafter the evidence of the workman was recorded. After the workman had led his evidence, the case was fixed for the evidence of the employer. When the evidence of the employer was partly recorded, the parties submitted that they have arrived at an amicable settlement and the dispute has been duly settled. Both the parties filed the terms of the settlement dated 31-1-2001 at Ext. 14 and prayed that consent award be passed in terms of the said settlement. I have gone through the said terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 31-1-2001. Ext. 14.

ORDER

1. It is agreed that Mr. Ladu Gawde, has been paid a sum of Rs. 20,000/- (Rupees twenty thousand only) in full and final settlement of his all claims arising out of his employment and subject matter of the reference.
2. It is agreed by Mr. Ladu Gawde that he shall accept the amount mentioned in clause one above in full and final settlement of his claim and further confirm that he shall have no claim of whatsoever nature against the firm including of Reinstatement or Re-employment.

The amount of Rs. 20,000/- by cheque No. 6410609 dated 31-01-2001 drawn on Dena Bank is paid today.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.